



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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LEE SIM
RECEIVED
AUG 07 2000
WATER RIGHTS
SALT LAKE

4 August 2000

John Tullis
1545 Old Piedmont Rd.
SAN JOSE CA 95132

RE: WATER USER ON PINTO CREEK, WASHINGTON COUNTY, UTAH

Mr. Tullis:

Your letter dated 01 August 2000 has been received in this office. Although I cannot be certain from the information you have provided, it appears that the farm to which you refer is that presently owned by Ivan B. & Helen C. Cannon, successors to R. Warren Platt of New Castle.

The water rights associated with the farm are identified as Water Rights Numbered **71-107** and **71-419**. Both rights carry priority dates of 1890 and are based on pre-statutory or "diligence" claims filed in the general adjudication of the Escalante Valley. Said general adjudication was initiated upon petition to the State Engineer in 1940 and the State Engineer's Proposed Determination of Water Rights was published and distributed in five "books" during the 1960's. The subject rights appear at page 36 of the book entitled "Enterprise Area". Attached are photocopies of the relevant portions of the Proposed Determination (hereafter, "PD").

In response to your numbered inquiries:

- 1) We have no verified information regarding the acreage currently being irrigated under these rights. The acreage described in the PD was that found being irrigated during the 1950's/1960's. We are currently in the process of obtaining aerial photography of the area which will be used to determine irrigated acreage and to identify those water users who may be irrigating more acreage than allowed by their rights. Until this enforcement work is completed, we cannot speak to the issue of currently irrigated acreage.
- 2) As you will see from the PD, the two subject rights provide for the diversion of up to 1.0 cubic foot per second (cfs) of water during the irrigation period of March 15 through November 1. Because there are other water users on Pinto Creek with equal or earlier priority, there may be times when there is insufficient water for these rights to take their full flow allotment. However, there is not currently a Distribution Commissioner ("watermaster") who is monitoring or distributing the water of Pinto Creek. There has been a Commissioner in the past who has made intermittent "spot checks" on Pinto Creek as part of other duties, but there are minimal records of those activities. What records

are available have questionable validity because the readings were too intermittent to justify extrapolation.

As set forth in the PD, these rights permit the diversion of up to 58.40 acre-feet for irrigation (14.60 acres @ 4 acre-feet per acre), plus an additional 14.60 acre-feet "for transmission purposes". An additional small amount is allowed for stockwatering and domestic purposes. Diversion at the rate of 1.0 cfs during the entire irrigation season (231 days) would result in a total of over 450 acre-feet of water being diverted. Obviously, this is well in excess of the amount allowed, but we have no verified information to confirm that this quantity of water is being taken. It is also understood that alfalfa hay – and even less so, pasture – would not consume that much water and that a significant portion would return to the creek in the form of runoff or return flows.

Under Utah law, beneficial use constitutes the basis and the limit of a water right. In this case, the beneficial use limits are 14.60 acres of irrigation, 23 head of livestock and the domestic purposes of one family. Although this information has been informally presented to water users in various settings (e.g., annual Distribution Meetings), to my knowledge there have been no formal notices given nor penalties assessed to this water user.

3) On the basis of my current knowledge, I cannot confirm nor deny your allegations of illegal stream alteration activities. In 1988, Ivan Cannon filed for and was granted a permit to alter the channel of Pinto Creek (Permit No. 88-71-01SA). However, that permit was limited to the construction of a culverted road crossing and there were no engineered plans required.

It is understood that a number of landowners along Pinto Creek have, through the past 10-20 years, performed work purportedly intended to prevent erosion and to aggrade incised portions of the Pinto Creek channel. In some cases, this work has been permitted in advance, in others "after-the-fact" permits were acquired. In yet others, permits were not issued and the work was ordered removed and the channel restored. There is little doubt in my mind that some violations have occurred that have not been detected nor dealt with formally. Some such violations would have been permitted if proper applications had been made, others would have been denied permits.

In the closing paragraphs of your letter, you repeat the allegations that the water user appears to be irrigating more acreage than the subject rights allow, to be using more water per acre than was historically used, and has unlawfully altered the natural course of the channel. You then request a reply as to my areas of responsibility in these matters.

Tullis
3 August 2000
Page 2

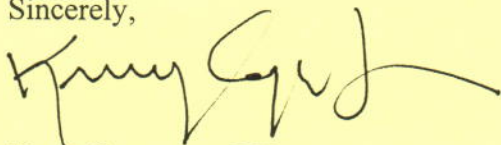
Our office has limited enforcement authority and functions primarily as an administrative agency. If we become aware of and can independently verify that activities of the type you allege are occurring, we will typically contact the party in violation and pursue the most effective remedies available. However, in many cases, those remedies are only available through the filing of actions in the District Court, a time-consuming and expensive process. For those reasons, we will generally only pursue court filings in the most serious cases and with the most recalcitrant violators.

Water users whose rights are impaired by the illegal activities of others are advised to provide this office with specific information documenting the manner in which their rights are being affected. We will then evaluate the situation to determine the most effective action. If such actions are not satisfactory to the complainant, or if the parties dispute the facts of the alleged violation and/or interference, our office does not have the authority to adjudicate those disputes and must refer the parties to other legal remedies (e.g., litigation, arbitration and stipulation, etc.).

As you may be aware, the battle over the waters of Pinto Creek goes back many years and is not likely to be resolved in the near future. We are hopeful that our current efforts to impose proper acreage limitations in the area – including the water users on Pinto Creek – will lead to some progress in that direction.

By copy of this letter, the Cannon's are being informed of your concerns. Hopefully, if there are violations occurring, they are the result of misunderstanding the limitations of the underlying rights and will be corrected promptly.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry Carpenter", with a stylized flourish at the end.

Kerry Carpenter, P.E.
Regional Engineer

pc: Files 71-107, 419
Ivan B. & Helen C. Cannon / 3038 Losee Rd. / LAS VEGAS NV 89030
Lee Sim, P.E. / Assistant State Engineer / Distribution

DETERMINATION OF WATER RIGHTS, ESCALANTE VALLEY
IRON, WASHINGTON, AND BEAVER COUNTIES, UTAH

CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW C.F.S.	POINT OF DIVERSION	PERIOD OF USE, Inclusive	
						FROM	TO
2377	United States of America Forest Service Ogden, Utah	Mineral Spring No. 2, Diligence Map 131	1860	.0134	Stock water directly on spring located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 5, T37S, R15W, SLB6M.	May 21	Sept. 30
858	United States of America Forest Service Ogden, Utah	Tank Spring Application No. 16285 Cert. of App. No. 4269 Map 131-b	Jan. 19 1945	0.0004	Stock water directly on spring located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 6, T37S, R15W, SLB6M.	May 21	Sept. 30
1430	United States of America Forest Service Ogden, Utah	Wheatgrass Creek, Diligence Map 131	1860		Stock water directly on stream from point of stream's issuance in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 8, T37S, R15W, SLB6M. to point of stream's confluence with Pinto Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T37S, R15W, SLB6M.	May 21	Sept. 30
99	Tullis, David A. & Mary L. (Joint Tenants) Newcastle, Utah	Pinto Creek, Diligence Map 132-c	1870	2.0	N. 1180 ft. W. 2360 ft. from SE cor. Sec. 10, T37S, R15W, SLB6M.	March 15	Nov. 1
1427	United States of America Forest Service Ogden, Utah	Pinto Creek, Diligence Map 132-c	1860		Stock water directly on stream from point located S. 980 ft. E. 1180 ft. from NW cor. Sec. 15, T37S, R15W, SLB6M. to point where stream leaves SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 10, T37S, R15W, SLB6M.	Jan. 1	Dec. 31
						Jan. 1	Dec. 31
						May 21	Sept. 30
1429	United States of America Forest Service Ogden, Utah	Oak Spring, Diligence Map 131	1860	.0134	Stock water directly on spring located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 17, T37S, R15W, SLB6M.	May 21	Sept. 30
419	Platt, R. Warren Newcastle, Utah as written 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 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2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2818 2819 2820 2821 2822 2823 2824 2825 2826 2827 2828 2829 2830 2831 2832 2833 2834 2835 2836 2837 2838 2839 2840 2841 2842 2843 2844 2845 2846 2847 2848 2849 2850 2851 2852 2853 2854 2855 2856 2857 2858 2859 2860 2861 2862 2863 2864 2865 2866 2867 2868 2869 2870 2871 2872 2873 2874 2875 2876 2877 2878 2879 2880 2881 2882 2883 2884 2885 2886 2887 2888 2889 2890 2891 2892 2893 2894 2895 2896 2897 2898 2899 2900 2901 2902 2903						

DETERMINATION OF WATER RIGHTS, ESCALANTE VALLEY
IRON, WASHINGTON, AND BEAVER COUNTIES, UTAH

ANNUAL WATER ALLOWED		PURPOSE, EXTENT & PLACE OF USE		CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	CLAIM NO.
FARM HEADGATE	DIVERSION FROM SOURCE					
AC. FT.	AC. FT.					
	See Remarks	STOCKWATERING: 678 cattle and horses - Pinto Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 856, Page 1.		Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 18,980 ac.ft.	2377
	See Remarks	STOCKWATERING: 678 cattle and horses - Pinto Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 856, Page 1.		Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 18,980 ac.ft.	858
	See Remarks	STOCKWATERING: 678 cattle and horses - Pinto Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 856, Page 1.		Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 18,980 ac.ft.	1430
99.48 See Remarks	A total of 24.87 ac.ft. is awarded for transmission purposes under W. U. Claim 99.	IRRIGATION: 9.60 acs. SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 10, T37W, R15W, S18E $\frac{1}{2}$ M, 6.10 acs. NW $\frac{1}{4}$ NW $\frac{1}{4}$, 10.90 acs. SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 11, T37S, R15W, S18E $\frac{1}{2}$ M, or total acreage of 26.60. SEE CLAIM USED FOR PURPOSE DESCRIBED	99		Water User's Claim 99 is limited to the irrigation requirements of 24.87 acres.	99
2.02		STOCKWATERING: 70 cattle, 2 horses SEE CLAIM USED FOR PURPOSE DESCRIBED	99			
0.73		DOMESTIC: 1 family SEE CLAIM USED FOR PURPOSE DESCRIBED	99			
	See Remarks	STOCKWATERING: 678 cattle and horses - Pinto Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 856, Page 1.		Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 18,980 ac. ft.	1427
	See Remarks	STOCKWATERING: 678 cattle and horses - Pinto Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 856, Page 1.		Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 18,980 ac. ft.	1429
See Remarks	A total of 14.60 ac.ft. is awarded for transmission purposes under W. U. Claims 419 and 107.	IRRIGATION: 0.50 ac. NW $\frac{1}{4}$ NW $\frac{1}{4}$, 12.60 acs. SW $\frac{1}{4}$ NW $\frac{1}{4}$, 7.40 acs. NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 15, T37S, R15W, S18E $\frac{1}{2}$ M, or total acreage of 20.50. SEE CLAIMS USED FOR PURPOSE DESCRIBED	107, 419		Water User's Claims 107 and 419 are limited to the irrigation requirements of 14.60 acres. Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 58.40 ac. ft.	419
See Remarks	See Claim 419, above, for trans- mission losses.	IRRIGATION: 0.50 ac. NW $\frac{1}{4}$ NW $\frac{1}{4}$, 12.60 acs. SW $\frac{1}{4}$ NW $\frac{1}{4}$, 7.40 acs. NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 15, T37S, R15W, S18E $\frac{1}{2}$ M, or total acreage of 20.50. SEE CLAIMS USED FOR PURPOSE DESCRIBED	107, 419		Water User's Claims 107 and 419 are limited to the irrigation requirements of 14.60 acres. Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 58.40 ac.ft.	107
0.64		STOCKWATERING: 20 cattle, 3 horses SEE CLAIM USED FOR PURPOSE DESCRIBED	107		Flow for this purpose is part of flow for irrigation.	
0.73		DOMESTIC: 1 family SEE CLAIM USED FOR PURPOSE DESCRIBED	107		Flow for this purpose is part of flow for irrigation.	